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Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO
HEATHER FONG, in her official capacity,
JOHN KESSOR, MICHELLE ALVIS and
PAUL MORGADO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN ESPINOSA, as a personal
representative of the Estate of decedent ASA
SULLIVAN; A.S., by and through his
Guardian ad Litem, NICOLE GUERRA,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, HEATHER FONG, in her
capacity as Chief of Police; JOHN KESSOR,
MICHELLE ALVIS and PAUL MORGADO,
et al.,

Defendants.

Case No. C06-04686 JSW

**DEFENDANTS' ADMINISTRATIVE MOTION
TO CONTINUE FINAL PRETRIAL
CONFERENCE; DECLARATION;
~~PROPOSED~~ ORDER**

[UNOPPOSED]

Trial Date: September 7, 2014

Current Pretrial Conf.: February 10, 2014

RELIEF REQUESTED

The Court continued the trial date in this matter from March 10 to September 8, 2014, but the final pretrial conference date was not continued and remains set for February 10, 2014. Defendants respectfully request that the pretrial conference be continued to either August 18 or August 25, 2014. Plaintiffs do not oppose the request. (Keith Decl. ¶ 3.)

BACKGROUND

This matter was set for trial in December 2013, but the Court continued the trial on its own motion to March 10, 2014, with a final pretrial conference set for February 10, 2014. (Doc. 347.)

After trial was set for March 10, 2014, Plaintiffs requested a continuance due to Plaintiffs' counsel's pre-existing trial date, and Defendants stipulated to the continuance. The Court granted the stipulated request and continued trial to September 8, 2014. (Doc. 353.) However, the stipulation and order were silent concerning the final pretrial conference date, and therefore the final pretrial conference remains on calendar for its original date, February 10, 2013 at 2 p.m.

GOOD CAUSE EXISTS TO CONTINUE THE FINAL PRETRIAL CONFERENCE

Defendants respectfully request that the final pretrial conference be continued to a date closer to trial. Plaintiffs do not oppose the request. (Keith Decl. ¶ 2.)

Good cause exists because defendants' lead trial counsel, Deputy City Attorney Blake Loeb, is having back surgery tomorrow, the date of which just had to be advanced due to his increasing symptoms, and his recovery time is expected to last for more than three weeks, past February 10. (Keith Decl. ¶ 3.) Therefore, there is a need to continue the pretrial conference.

Defendants respectfully suggest that the final pretrial conference be continued to a date closer to trial. Defendants note that the Court already held one final pretrial conference and that many legal matters such as motions in limine were already resolved as a result. (Doc. 309 (civil minute order), Doc. 336 (further ruling on motions in limine).) Therefore, the parties and the Court have already obtained the benefit of an early final pretrial conference. Moving the currently scheduled final pretrial conference closer to trial would more effectively permit the Court and the parties to address logistics, scheduling, and any new matters that may arise over the next several months that will affect the conduct of trial. (Keith Decl. ¶ 4.)

Therefore, Defendants respectfully propose that the final pretrial conference be set for Monday August 18, 2014 at 2pm, or alternatively Monday August 25, 2014 at 2pm. Counsel anticipates not being available on August 11, 2014. (Keith Decl. ¶ 5.)

//

1 **CONCLUSION**

2 For the reasons discussed above Defendants respectfully request that the pretrial conference in
3 this matter be continued from February 10, 2014 to either August 18, 2014 or August 25, 2014 at 2:00
4 pm.

5 Dated: January 28, 2014

6 DENNIS J. HERRERA
City Attorney
7 CHERYL ADAMS
Chief Trial Deputy
8 BLAKE P. LOEBS
PETER J. KEITH
9 Deputy City Attorneys

10 By: /s/ Peter J. Keith
11 PETER J. KEITH
Attorneys for Defendants
12 CITY AND COUNTY OF SAN FRANCISCO
HEATHER FONG, in her official capacity,
13 JOHN KEESOR, MICHELLE ALVIS and
PAUL MORGADO

14 **DECLARATION OF PETER J. KEITH**

15 I, Peter J. Keith, declare:

16 1. I am a Deputy City Attorney with the City and County of San Francisco. I have
17 personal knowledge of the contents of this declaration, and, if called upon to testify, I could and would
18 testify competently to the contents of this declaration.

19 2. On January 27, I informed Plaintiffs' counsel Ben Nisenbaum of Defendants' request
20 for a continuance and proposed dates, and Mr. Nisenbaum informed me that Plaintiffs do not oppose
21 this request.

22 3. My colleague Deputy City Attorney Blake Loebs and I are the two attorneys assigned
23 to represent Defendants at trial, with Mr. Loebs as the lead counsel. Mr. Loebs informed me that he
24 is having back surgery tomorrow, the date of which just had to be advanced due to his increasing
25 symptoms, and his recovery time is expected to last for more than three weeks, past February 10.

26 4. In my experience, a pretrial conference would likely be more effective for the parties
27 and the Court closer to trial. I expect that closer to trial counsel will know more about matters like
28

1 witness availability and scheduling, as well as any appellate decisions that might bear on trial. In
2 addition, unforeseen matters may arise in the next several months that may need to be addressed closer
3 to trial. Therefore, I expect it to be more efficient for the Court, counsel, and parties to continue the
4 final pretrial conference to a date closer to trial.

5 5. I am unlikely to be available on Monday August 11 due to vacation plans.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct.

8 Executed, January 28, 2014, at San Francisco, California.

9 /s/ Peter J. Keith

10 PETER J. KEITH

11
12 **~~PROPOSED~~ ORDER**

13 GOOD CAUSE SHOWN, the Court hereby continues the pre-trial conference in this action
14 from February 10, 2014 at 2 p.m. to August 4⁴, 2014 at 2 p.m.

15 IT IS SO ORDERED.

16
17 Dated: February 4, 2014

18 Jeffrey S. White
HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE